

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 * * *

4 BRANDON MCGUIRE,

5 v.

Plaintiff,

7 DIRECTOR OF NURSING HDSP, *et al.*,

8 Defendants.

Case No. 2:23-cv-02070-RFB-MDC

ORDER

10 Plaintiff Brandon McGuire brings this civil-rights action under 42 U.S.C. § 1983 to redress
11 constitutional violations that he claims he suffered while incarcerated at High Desert State Prison.
12 ECF No. 7. On July 9, 2024, this Court ordered McGuire to file an amended complaint by October
13 7, 2024. ECF No. 6. The Court warned McGuire that the action could be dismissed if he failed to
14 file an amended complaint by that deadline. *Id.* at 6. That deadline expired and McGuire did not
15 file an amended complaint, move for an extension, or otherwise respond.

16 **I. DISCUSSION**

17 District courts have the inherent power to control their dockets and “[i]n the exercise of
18 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.
19 Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may
20 dismiss an action based on a party’s failure to obey a court order or comply with local rules. See
21 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply
22 with local rule requiring *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal
23 Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In
24 determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the
25 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;
26 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
27 their merits; and (5) the availability of less drastic alternatives. See In re Phenylpropanolamine

1 Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone v. U.S. Postal Serv., 833
 2 F.2d 128, 130 (9th Cir. 1987)).

3 The first two factors, the public’s interest in expeditiously resolving this litigation and the
 4 Court’s interest in managing its docket, weigh in favor of dismissal of McGuire’s claims. The third
 5 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
 6 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
 7 or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
 8 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
 9 the factors favoring dismissal.

10 The fifth factor requires the Court to consider whether less drastic alternatives can be used
 11 to correct the party’s failure that brought about the Court’s need to consider dismissal. See Yourish
 12 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
 13 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
 14 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
 15 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
 16 prior to disobedience of the court’s order as satisfying this element[,]” i.e., like the “initial granting
 17 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been
 18 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally
 19 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,
 20 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
 21 unless McGuire files an amended complaint, the only alternative is to enter a second order setting
 22 another deadline. But the reality of repeating an ignored order is that it often only delays the
 23 inevitable and squanders the Court’s finite resources. The circumstances here do not indicate that
 24 this case will be an exception: there is no hint that McGuire needs additional time or evidence that
 25 he did not receive the Court’s screening order. Setting another deadline is not a meaningful
 26 alternative given these circumstances. So the fifth factor favors dismissal.

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1 **II. CONCLUSION**

2 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
3 favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based on
4 McGuire's failure to file an amended complaint in compliance with this Court's July 9, 2024,
5 order. The Clerk of Court is directed to enter judgment accordingly and close this case.

6 The Plaintiff may move to reopen this case and vacate the judgment by filing a motion for
7 reconsideration of this order. In this motion, the Plaintiff would need to explain what
8 circumstances led to his failure to file an amended complaint by the deadline as directed by the
9 Court. If the Court finds there is good cause or a reasonable explanation for this failure, the Court
10 will reopen the case and vacate the judgment.

11 It is further ordered that McGuire's application to proceed *in forma pauperis* (ECF No. 5)
12 is denied as moot.

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14 DATED: October 23, 2024.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE